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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1942

No. 797

J. R. MASON,
Petitioner,
vs.
PALO VERDE IRRIGATION DISTRICT,
Respondent.

PETITION FOR A REHEARING.

To the Honorable Harlan F. Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Comes now, the petitioner herein, J. R. Mason, and presents this his petition for a rehearing of the petition for a writ of certiorari herein, and in support thereof respectfully shows:

I.

THE FUNDS INTERFERED WITH BY THE DISCHARGE IN THE FINAL DECREE ARE STATE FUNDS.

They are State funds, dedicated by the sovereign State of California for specific purposes; they belong to the State the same as funds derived from taxes payable by private holders of land or other taxable property for the support of the San Francisco Harbor, or any other State function.

These funds stem from powers "reserved to the States" under the 10th Amendment, never surrendered, and which therefore, unlike the species of tax involved in the case of *Maricopa County v. Valley National Bank,* decided by this Court on March 1, 1943, were never based on a power "conferred" on the States by the Congress. See *The Federalist,* Nos. XXXII, XXXIII, *"Municipal Debt Adjustments under the Bankruptcy Act",* G. J. Patterson, University of Pennsylvania Law Review, Vol. 90, No. 5, March, 1942.

The Supreme Court of California has ruled squarely that these funds and all other property belonging to such a State agency as the respondent constitute "property owned by the State". See *Anderson Cottonwood I. D. v. Klukkert,* 13 Cal. (2d) 191, 88 Pac. (2d) 685. See also *Glenn Colusa I. D. v. Ohrt,* 31 Cal. App. (2d) 619, 88 Pac. (2d) 763.

The question of whether the Metropolitan Water District is a "municipal corporation" or "State agency" like respondent was decided on February 24, 1943 by the California Supreme Court, in which deci-

sion the Court also took occasion to reaffirm that an irrigation district in California is a State agency, and not a "municipal corporation."

In this case, *Metropolitan Water District v. County of Riverside,* 134 Pac. (2d) 249, the Supreme Court said:

> "This court held that inasmuch as plaintiff (Metropolitan Water District) 'more closely resembles a municipal corporation than it does a *state agency such as irrigation and reclamation districts',* the disqualification of judges imposed by the code was without application. * * *
>
> Neither the Turlock (Irrigation District) nor the Orange County case may be accepted as authoritative determination that a metropolitan water district such as plaintiff is not a 'municipal corporation' ". (Emphasis ours.)

These recent decisions of the State Court definitely establish the true nature of the funds interfered with by the final decree. They are property belonging to the sovereign State of California, and hence, we respectfully submit, with all deference, are a species of property *ultra vires* any power of the Congress to regulate, and which the Congress expressly exempted under the Act of August 16, 1937, as amended, 11 USCA §§ 401-404, by the inclusion therein of the explicit prohibition in 11 USCA Sec. 403, subsections (c) and (i).

This limitation was urged as one of the most important features of the amended Act, and was recognized as of basic importance by this Honorable Court,

when it quoted from the Report of the House Committee on the Judiciary in the *Bekins* decision, as follows:

> "No interference with the fiscal or governmental affairs of a subdivision is permitted * * * no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill."
>
> *U. S. v. Bekins,* 304 U.S. 27, 51.

II.

THE ESSENCE OF THE FINAL DECREE IS THAT IT SEEKS TO DIRECT THE APPLICATION OF THESE STATE FUNDS. THIS INTERFERENCE MUST BE ILLEGAL.

Respondent contends that the question presented in Point IV of petitioner's brief "was settled" in the cases cited on page 11 of his brief, and that it is therefore "idle for petitioner now to argue that the final decree interferes with governmental or political affairs of the District."

Respondent is, with due deference, mistaken.

The final decree in the *Merced* case contains no time limit outlawing the bonds involved in that case. The vested property rights of the petitioner in that case have not been meted out the "death sentence" as are those of petitioner and other creditors, by the drastic forfeiture terms of the final decree in the instant case.

In the *Anderson Cottonwood* case, also cited by respondent as "settling" the matter, the point as pre-

sented here could not be raised, because the Court below had said, "In view of the failure to specify the point or to argue it in the brief, the alleged error will not be considered." (126 Fed. (2d) 921, 922.)

Although the question of jurisdiction, as that point was construed and decided in the *Ashton* case (298 U.S. 513) has been raised in a number of cases involving the same species of State agency as respondent, since the *Bekins* case, it has been presented only in appeals from interlocutory decrees, not one of which decrees involved an order directing the application of the trust funds freed by the terms of the final decree in the instant case.

The interlocutory decrees involved only the creditors, but did not in any respect serve to exonerate any California irrigation district from the mandatory duties imposed upon it by applicable State law which governs the application of the State funds and property interfered with by the final decree in the instant case.

Such a State agency may not be sued.

Moody v. Provident Irr. Dist., 12 Cal. (2d) 389, 85 P. (2d) 128.

Therefore, nothing in the interlocutory decrees was in conflict with applicable State law, as it had been construed by the highest State Court.

Also, for the reasons shown, your petitioner was not able to raise the basic question here presented, when filing the two petitions cited in respondent's brief. Hence we respectfully submit that the contention of

respondent that "The point was settled" is a clear overstatement.

In *Worthen v. Kavanaugh,* 295 U.S. 56, 60, it was stated:

> "In the books there is much talk about the distinctions between changes of the substance of the contract and changes of the remedy. * * * The dividing line is sometimes obscure."

At most, the interlocutory decrees which have been taken to this Honorable Court from California involved the "remedy", and in no sense did they involve the "substance of the contract" as does the final decree here challenged.

This final decree, if it stand, is tantamount to a wrench to the doctrine of immunity, steadfastly denounced by this Court, when such State functions were involved, as here.

> "The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of the state and national government are many; but for a very long time this Court has adhered steadfastly to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause."
>
> *Ashton v. Cameron County W.I.D.,* 298 U.S. 513.

> "One branch of the government can not encroach on the domain of another without danger.

The safety of our institutions depends in no small degree on a strict observance of this salutary rule."

Sinking Fund cases, 99 U.S. 700, 718.

III.

GREAT UNCERTAINTY NOW EXISTS INVOLVING THE LINE SEPARATING THE POWERS RESERVED TO THE STATES AND THOSE GRANTED TO THE FEDERAL GOVERNMENT AS HERETOFORE STEADFASTLY ADHERED TO BY THIS COURT.

We are not here questioning the constitutionality of the amended Chapter IX, but the application of it to the particular funds and obligations affected by the terms of the final decree, as construed by the Court below, in the instant case. The radically altered language in the severability clause in the amended Act (11 U. S. C. A. Sec. 401), plus the deletion of the provision in the original Chapter IX that made state consent a prerequisite, plus the explicit prohibitions in the amended Act (subsections (c) and (i), Sec. 403), would seem to admit of no doubt that the Congress was meticulous in respect of the limitations on the jurisdiction it intended to grant to its Courts under the amended Act.

As was said by this Court in *Cheathem v. Norvekl,* 92 U. S. 561, 562:

> "All governments, in all times, have found it necessary to adopt stringent measures for the collection of taxes, and to be rigid in the enforcement of them * * *

> In this country, this system for each *state* or for the Federal Government provides safeguards of its own against mistake, injustice or oppression, in the administration of its revenue laws . . .
>
> *That system is intended to be complete . . .*
>
> If there existed in the courts, State or National, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of government (State or National) might be placed in the hands of a hostile judiciary." (Emphasis ours.)

Is it not well settled by our laws that certain powers are inherent in the people, and so inalienable that they can not be subjected to control even by the people themselves, much less by representatives to whom the guardianship of such powers has been entrusted for a time? There are certain powers vested by the people in their state governments, which can not be abdicated or subjected to the jurisdiction of the federal government. The power of which state sovereignty itself is composed, is the power to lay and collect direct taxes and to borrow money, and with the exercise of this power the final decree as applied here, "interferes" (comes into collision). This is clearly an interference of the same sort as if it authorized the same agency of the State to levy and collect direct ad valorem taxes at rates higher than those required or allowed by applicable State law. The rule must apply both ways, equally.

No case has been cited, and petitioner knows of none which even suggests that the foregoing prin-

ciples with regard to the doctrine of dual sovereignty are not still the rule of law, and in support of this view we quote from the opinion of this Court in the case of *United States v. Butler,* 298 U. S. 1, as follows:

> "It hardly seems necessary to reiterate that ours is a dual form of government; that in every state there are two governments—the state and the United States. Each state has all governmental powers save such as the people, by their Constitution, have conferred upon the United States, denied to the states, or reserved to themselves. The federal union is a government of delegated powers. It has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted. In this respect we differ radically from nations where all legislative power, without restriction or limitation, is vested in a parliament or other legislative body subject to no restrictions, except the discretion of its members . . .
>
> From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary the Tenth Amendment was adopted."

In the case of *Merriweather v. Garrett,* 102 U. S. 472, it was said:

> "We are of the opinion that this court has not the power to direct a tax to be levied for the payment of these judgments. This power to impose

burdens and raise money is the highest attribute of sovereignty, * * *

Especially is it beyond the power of the Federal judiciary to assume the place of a State in the exercise of this authority at once so delicate and so important.

It is certainly of the highest importance to the people of every State that it should make provision, not merely for the payment of its own indebtedness, but for the payment of the indebtedness of its different municipalities. Hesitation to do this is weakness; refusal to do it is dishonor. Infidelity to engagements causes loss of character to the individual; it entails reproach upon the State."

As this Honorable Court said in *Providence Bank v. Billings,* 4 Peters 514:

"Whatever may be the rule of expediency, the constitutionality of a measure depends not on the degree of its exercise, *but on its principle.*" (Emphasis ours.)

Also, in *Von Hoffman v. Quincy,* 4 Wall. 535, this Court said:

"The power (of taxation) given becomes a trust which the donor can not annul and the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of contract in this way, than in any other."

It is too well settled to require citations that neither consent nor submission by the states can enlarge the powers of Congress.

The Courts below, have ruled that the scale down of public bonds can be effected under the amended Chap. IX without state consent.

In re So. Boardstown Dr. Dist., 125 Fed. (2d) 13.

The basic constitutional principle is well illustrated by holy writ. In the Bible it is written:

"Thou shalt not covet they neighbor's wife." Ex. 20:17, and, if the neighbor "consents", adultery is committed, which is prohibited by Ex. 20:14.

Therefore, if the final decree below is not reversed, the rule that "State powers can neither be appropriated on the one hand nor abdicated on the other", declared by this Court in *Carter v. Carter Coal Co.,* 298 U. S. 238, and also the provisions in Section 6, Article XIII of the California Constitution, "The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party", will clearly be broken.

If the Courts or the Congress are once permitted to issue decrees which serve to forgive direct taxes on the value of land, lawfully payable by private interests, those same Courts must possess the power to control the collection of any other taxes lawfully due to a state, to repay money borrowed by the state or one of its instrumentalities, to whom its taxing power has been confided and pledged, and even to forbid a state from levying or attempting to enforce the collection of taxes or rent from those holding land.

The holders of such bonds, as those belonging to your petitioner, are denied aid by the federal Courts

when seeking to enforce their contracts by demands that the lien created by state law for such unpaid taxes be foreclosed.

Rorick v. U. S. Sugar Corp., 120 Fed. (2d) 418.

The rights of the parties, namely, petitioner, respondent and the private holders of title to land, and mortgages on the land, have been settled, time without number, since the historic decision by this Court in the case of *Fallbrook I. D. v. Bradley,* 164 U. S. 112.

The most recent case that involved the same basic conflict between public and private property rights to land in the Fallbrook Irrigation District is the case of *Fallbrook Dist. v. Cowan,* 131 Fed. (2d) 513. The Court below, in that case, sustained the absolute property rights of the district, after petition for a rehearing, but the appellee is, we are informed, about to petition this Court for a writ of certiorari, in the hope of getting the judgment reversed.

It seems obvious, in the instant case, that if the law was correctly construed in 131 Fed. (2d) 513, the final decree here challenged must be set aside, and that it should only be allowed to stand if the rule of property and law decreed in 131 Fed. (2d) 513 be reversed.

Clearly, if one person claiming to "own" land in such a district loses all right, title and interest to the land and is unable to obtain "relief" under the broad provisions of Section 75 of the Bankruptcy Act, no multiple of persons in like position should be permitted to circumvent the law by acting through a state agency filing under Chapter IX.

"A municipality holds title to property acquired for unpaid taxes in trust for the benefit of bondholders and other creditors of the District."

State v. Stacy, 116 Pac. (2d) 356 (Wash. Sup. Ct.).

See, also:

U. S. v. Greer Dr. Dist. (Miss.), 121 Fed. (2d) 675;

Moody v. Provident Irr. Dist., 12 Cal. (2d) 389, 85 Pac. (2d) 128.

In 61 *Cal. Juris.* 81 it is said:

"The taxing power of the State is exclusively a legislative function, * * *. Subject to the fundamental or organic limitations on the power of the state, the legislature has plenary power on the matter of taxation, and it *alone* has the right and discretion to determine all questions of time, method, nature, purpose, the extent in respect of the imposition of taxes, the subjects on which the power may be exercised, and all incidents pertaining to the proceedings from beginning to end; and the *exercise of such discretion,* within constitutional limitations, *is not subject to judicial control.*" (Emphasis ours.)

In 61 *Cal. Juris.* 70 and 24 *Cal. Jur.* 21 it is said that no tax, such as respondent and the counties of Riverside and Imperial are irrevocably pledged to levy and collect, "at the same time and in the same manner and form as county taxes are collected" and to be of "the same force and effect as other liens for taxes" (Cal. Stat. 1917, p. 818, Sec. 9) rests upon any contract, express or implied, between the state

and the party owing the tax, and that such a tax is therefore not a "debt".

Thus, are the bonds at bar, a "debt"? They represent merely a promise by an agency of the state that the money borrowed will be repaid from taxes, regardless of how long a time may be needed in order to enable respondent to fulfill such trust contract.

As this Court said in *Murray v. Charleston,* 96 U. S. 432:

> "But until the payment of the debt or interest has been made, as stipulated, we think no act of State sovereignty can work an exoneration from what has been promised to the creditor; namely payment to him, without a violation of the Constitution."

The property rights represented by the ownership of the bonds and coupons annulled by the final decree, is at least as vested as were the rights of Mr. Wood in the tax-title deed he had invested in, and which was upheld by this Court when it reversed the Supreme Court of Arkansas in *Wood v. Lovett,* 313 U. S. 362.

Is the power belonging to Congress, under the Bankruptcy Clause broad enough to take the property of Mr. Wood in that case and give it to Mr. Lovett?

Although no person claiming such property rights as did Mr. Lovett in that case, has been before the Court, in the instant case, the conflict is, at bottom between the same basic claims that were before this Court in the *Wood v. Lovett* case.

Here, there is in Court only your petitioner and the respondent, who is merely a public trustee with nothing at all to gain or lose, no matter what the outcome of the case.

The rental value or usufruct of all the land within the taxable boundaries of respondent will not be reduced nor affected one iota by the discharge provision in the final decree. The sole profit will inure to private landlords and speculators into whose pockets the usufruct of these fertile reclaimed lands will be diverted, once the final decree is allowed to become law, because they will be released from the duty of contributing that part of the usufruct as required by applicable State law equivalent to the sum of money taken from your petitioner by the final decree. Such interests will thus have been permitted to succeed in their drive to misappropriate and retain more of the usufruct than they are permitted to appropriate under the law.

The rental value or usufruct of all the land in this district has been dedicated by the California Legislature as a "public trust" for the "uses and purposes of the Act", which no private interest has any right, title or interest in as long as the bonds belonging to your petitioner are not paid in full, according to their terms.

Fallbrook I. D. v. Bradley, supra;
Fallbrook v. Cowan, supra;
Provident v. Zumwalt, supra.

As this Court said in *Charles River Bridge v. Warren Bridge,* 11 Pet. 419:

> "While the rights of private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation."

In *The Federalist,* No. XXXIII, it is said:

> "Suppose, by some forced constructions of its authority (which indeed cannot easily be imagined), the Federal legislature should attempt to * * * abrogate a land tax imposed by the authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which its Constitution plainly supposes to exist in the State governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who, in the imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths."

IV.

THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH THOSE OF OTHER CIRCUIT COURTS.

Since filing the petition in the instant case, petitioner has noted in the Federal Reporter a most interesting decision by the Fifth Circuit Court of Appeals, in the case of *State of Texas v. Tabasco School District,* 132 Fed. (2d) 62, a case on all fours with the instant case, as regards the relative rights of creditors. The Court below, in the instant case denied our right to receive, as a minimum, the same settlement as the

Reconstruction Finance Corporation, namely the same 4% refunding bonds instead of cash, with no interest at all for the many years of default and litigation.

In the *Tabasco* case, above, the Circuit Court stated:

> "Finally, it is claimed that the plan discriminates unfairly between creditors of the same class, in that the R.F.C. is in reality to receive its settlement in 4% bonds, whereas appellant is required to accept cash. We think the point is well taken, and that appellant is entitled to the same treatment as the R.F.C. In order that the plan may be modified in this respect, the judgment appealed from is reversed, and the cause remanded to the district court for further proceedings not inconsistent with this opinion."

In denying petition for a rehearing in this case, the Fifth Circuit Court of Appeals said (133 Fed. (2d) 196):

> "Reconstruction Finance Corporation appears in the record as the outright owner by purchase prior to June, 1940, of ninety-two per cent of the bonds of Tabasco Consolidated Independent School District, and as such owner accepted the offer of composition. The State of Texas owns the remaining bonds and refused acceptance. The decree finds that all bondholders are of one class, and is based on the acceptance of Reconstruction Finance Corporation. It also finds that the plan it approves does not discriminate unfairly in favor of any creditor, but we think it clearly does. The State is to get sixty-five per cent of the face of its bonds (as bonds not purchased by R.F.C.) in cash. Reconstruction Finance Corporation is to get 'the money expended by it for the purchase of old

bonds of petitioner as herein provided *with interest* on all disbursements for such purposes at 4% per annum *from date thereof.'* It is not to deposit its bonds with the disbursing agent, but is to be paid with the new 4% bonds to be issued. It is plainly getting new 4% bonds for its investment, *with interest added,* in exchange for the old bonds it owns, bought at 65 over three years ago. The State is to get 65, *without interest,* and in cash, though it considers new 4% bonds more desirable. Reconstruction Finance Corporation is not an outside lender of money, or purchaser of new bonds, but is the majority bondholder, *controlling* the fate of this composition. *It is entitled to nothing more than or different from what the minority receives.* The argument that it will not make a loan unless for the entire bond issue, because it will refuse to be a cocreditor, does not carry weight. *It is a co-creditor now.*

Rehearing denied." (Emphasis ours.)

In addition, we respectfully submit that the decisions of other Circuit Courts, cited below, are in conflict with the decision of the Court below, in the instant case.

Rittenoure v. Charlotte County, 109 Fed. (2d) 476 (C. C. A. 5th).

In re City of W. Palm Beach, 96 Fed. (2d) 85 (C. C. A. 5th);

Spellings v. Dewey, 122 Fed. (2d) 652;

Starr v. O'Connor, 118 Fed. (2d) 548;

Ohio Oil Co. v. Thompson, 120 Fed. (2d) 831;

Central R. R. of N. J. v. Martin, 115 Fed. (2d) 968.

V.

THE DECISION OF THE COURT BELOW CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT.

Clearly, nothing said in the *Bekins* case modified or reversed the doctrine of immunity as construed by this Honorable Court, without any deviation from the *McCulloch* case (4 Wheat. 316) to the *Ashton* case (298 U. S. 513) and the *Brush* case (300 U. S. 352, 367-369). Nor does the decision of this Honorable Court in the *Graves v. New York,* 306 U. S. 466 decision, or the *Faitoute Iron & Steel Co. v. City of Asbury Park, N. J.,* ..... U. S. ....., decided June 1, 1942, disclose any intention to overrule the immunity doctrine.

Therefore, we respectfully submit, with all deference, that the final decree in so far as it, in both legal and practical effect, releases the State funds and property for which the respondent is trustee, transcends the limitations imposed by the Act, 11 U. S. C. A. §403, in the subsections (c) and (i), and also the doctrine of immunity as construed by this Honorable Court in the case of

Ashton v. Cameron County W. I. D., 298 U. S. 513.

VI.

THE COURT BELOW HAS DECIDED AN IMPORTANT QUESTION OF LOCAL LAW IN CONFLICT WITH APPLICABLE LOCAL DECISIONS.

Among other conflicts with local decisions, we respectfully refer to the unsuccessful attempt to get the State Court to approve Section 113 (Cal. Stat. 1933,

p. 800) which was denounced in the case of *Selby v. Oakdale Irr. Dist.,* 140 Cal. App. 171, 35 P. (2d) 125, at page 176, as follows:

> "As to the right of the parties to prosecute this action, we agree with counsel that Sec. 113 (Stat. 1933, p. 800), added to the California Irrigation District Act by an Act of the legislature approved May 9, 1933, is ineffective for any purpose.
>
> Its unconstitutionality is so apparent that citation of authority seems needless * * *
>
> It is evident that the Legislature has no power to limit the right of any one whose property interests have been invaded to seek redress through the courts unless joined by others owning like property."

Similar unconstitutional attempts to invade the property rights of minority bondholders, were denounced by the State Supreme Court in:

County of San Diego v. Hammond, 6 Cal. (2d) 709, 44 Pac. (2d) 340.

In

Provident Land Corp. v. Zumwalt, 12 Cal. (2d) 365, 85 P. (2d) 116,

the Court was faced squarely with the problems of a district in at least as much difficulty as respondent here alleges that it was. Virtually all the privately held land also belonged to that district because of unpaid taxes. The Court there said:

> "* * * the district may freely transfer, *lease* or otherwise deal with the lands, in so far as its *power* is concerned, but the *lands* remain in trust, and the district exercises its powers, however

broad, as a trustee * * * it necessarily follows that their proceeds, whether by sale *or lease,* are likewise subject to the trust. * * * The land is the ultimate and only source of payment of the bonds. It can never be permanently released from the obligation of the bonds until they are paid." (Emphasis ours.)

In

Moody v. Provident Irr. Dist., 12 Cal. (2d) 389, 85 P. (2d) 128, at page 395,

the California Supreme Court said:

"That the annual assessments and the sale of the lands upon which the assessments are not paid may never realize sufficient money to pay the indebtedness of the district is entirely beside the question.

The property of the district, so far as it owns any property, *constitutes a public trust* and is held by the district for a public use, and, therefore, is not subject to levy and sale upon execution by a creditor of the district. (Citations.)

That the statute of limitations, under the circumstances disclosed by this case, *could never be pleaded* by the district *until* it had the money in its possession to pay the bonds belonging to plaintiff, and had given notice, is supported by the case of Freehill v. Chamberlain, 65 Cal. 603, 4 P. 646 * * *." (Emphasis ours.)

The final decree forever divests petitioner of his vested property rights in the "Public Trust", as above construed by the Supreme Court of California. Petitioner has had State property taken from him by a

Federal Court, in conflict with the applicable local decisions, and law above cited.

All funds and property of a California Irrigation District is property "owned by the State".

El Camino L. C. v. El Camino Irr. Dist., 12 Cal. (2d) 378, 85 P. (2d) 123.

CONCLUSION.

Your petitioner begs to quote an excerpt from the argument by Jeremiah Black to this Honorable Court in the *ex parte Milligan* case:

> "In peaceable and quiet times, our legal rights are in little danger of being overborne; but when the wave of power lashes itself into violence and rage, and goes surging up against the barriers which were made to confine it, then we need the whole strength of an unbroken Constitution to save us from destruction."

The actual controversy here presented far transcends any "ordinary run of the mill litigation", as respondent contends.

A long recognized principle of constitutional law, namely the doctrine of immunity has been violated by the final decree, if it should stand. The conflict between public and private rights to ground rent or usufruct lawfully payable to a sovereign State, without limit as to time or amount is also directly presented and is of the widest possible significance and importance to the general welfare.

A careful study of the hearings and debate in the Congress on the amended Chapter IX leads your petitioner to suggest, without the slightest fear of successful contradiction, that the Congress freely recognized its lack of authority to control or regulate the application of State funds, with or without the consent of a State and intended the amended act to include only proprietary and non-governmental activities of local entities. The radically altered severability clause (Sec. 401) of the amended act seems to prove clearly that the Congress had no doubt whatever that petitions by such mere mandatories or agents of the State as respondent, whose property is State owned, and therefore wholly a State affair, would not be sustained because of conflict with State authority, and with the fundamental principal of the *Ashton* case, which is still the law.

For this reason, and with all deference your petitioner respectfully urges that this petition for a rehearing should be granted, and that a writ of certiorari be issued out of and under the seal of this Honorable Court as prayed for in the petition for writ of certiorari, herein.

Dated, San Francisco, California,
April 23, 1943.

Respectfully submitted,
J. R. MASON,
Petitioner in Propria Persona.

CERTIFICATE.

I do hereby declare the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco, California,
April 23, 1943.

J. R. MASON,
Petitioner in Propria Persona.